

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION**

In re REGIONS MORGAN KEEGAN
SECURITIES, DERIVATIVE and ERISA
LITIGATION

This Document Relates to:

Case No: 10-2188-SHM

*In re Helios Closed-End Funds Derivative
Litigation*, No. 2:10-cv-02188-SHM-dvk

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS'
VERIFIED CONSOLIDATED SHAREHOLDER DERIVATIVE COMPLAINT BY
CARTER ANTHONY**

Morgan Asset Management, Inc. ("MAM"), Allen B. Morgan, Jr., J. Kenneth Alderman, Thomas R. Gamble, Charles D. Maxwell, Brian B. Sullivan, Joseph C. Weller, J. Thompson Weller, Michele F. Wood, James C. Kelsoe, Jr., and David H. Tannehill (collectively, the "Individual Defendants") filed a memorandum of law in support of their motion to dismiss this derivative action which is incorporated herein by reference and offered as support of Defendant Anthony's motion to dismiss.

Additionally, Mr. Anthony would affirm that he was never a director, as alleged, of the Helios Advantage Income Fund, Inc. (f/k/a RMK Advantage Income Fund, Inc.) ("RMA Fund"), Helios High Income Fund, Inc. (f/k/a RMK High Income Fund, Inc.) ("RMH Fund"), Helios Strategic Income Fund, Inc. (f/k/a RMK Strategic Income Fund, Inc.) ("RSF Fund"), and Helios Multi-Sector High Income Fund (f/k/a RMK Multi-Sector High Income Fund, Inc.) ("RHY Fund") (collectively, the "Funds"). He served in no capacity with MAM or the Funds after December of 2006. Carter Anthony was effectively relieved of his duties with Morgan Asset Management in July of 2006, and separated from the company entirely on December 5 or 6 of

2006. This was well more than three years prior to this case being filed.¹ He could not have done anything, or failed to do anything, within the limitations periods governing the action. *See* Md. Code Ann., Cts. & Jud. Proc. § 5-101. Under Maryland law, “[l]itigants have three years from the date their action accrues to file a civil action.” *Bank of N.Y. v. Sheff*, 854 A.2d 1269, 1275 (Md. 2004).

Plaintiffs fail to allege any conduct on the part of Mr. Anthony with any specificity but certainly do not iterate conduct within the three years prior to filing the action. Further, unlike other defendants, Mr. Anthony has not signed any tolling agreement.

Plaintiffs’ claims fail as a matter of law and must be dismissed. Plaintiffs’ own allegations, particularly when considered in connection with the Funds’ offering documents and other public filings, demonstrate that Plaintiffs were on notice of their claims by January 2007 at the latest, more than three years prior to the filing of this lawsuit.

Finally, because Plaintiffs allege that Defendant Anthony breached his fiduciary duties by engaging in fraudulent misconduct and such claims are subject to the pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure. Plaintiffs, however, have failed to meet this heightened pleading requirement. The general allegations made against “defendants” are insufficient to state a claim as a matter of law.

¹ Plaintiffs originally filed separate lawsuits in this Court captioned *Cannaday v. Sullivan, et al.*, Case Nos. 2:10-cv-02188-SHM-tmp (W.D. Tenn. March 18, 2010); 2:10-cv-02190-SHM-dkv (W.D. Tenn. March 18, 2010); 2:10-cv-02191-SHM-cgc (W.D. Tenn. March 18, 2010), and *Godfrey v. Sullivan, et al.*, Case No. 2:10-cv-02192-SHM-dkv (W.D. Tenn. March 18, 2010). On November 5, 2010, the Court consolidated these actions under Case No. 2:10-cv-02188-SHM-dkv. (Docket Entry No. 32.)

This 24th day of January, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the within and foregoing **Motion to Dismiss and Memorandum in Support** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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